

# INFORMATION LETTER

Not for  
Publication

NATIONAL CANNERS ASSOCIATION

For Members  
Only

No. 748

Washington, D. C.

June 24, 1939

## LEA BILL GOES TO PRESIDENT

### Postpones Effective Date of Labeling Provisions of Food and Drug Act

The conference report on the Lea bill amending the Federal Food, Drug, and Cosmetic Act was adopted by the House on June 17 and the bill as agreed to by Senate and House was sent to the President.

So far as foods are concerned, the general effect of the measure is: (1) to make the application of the provisions on certified colors definitely begin on January 1, 1940; (2) to continue present McNary-Mapes standards in effect until January 1, 1940; (3) to postpone the effective date of new standards and label requirements definitely to January 1, 1940, and, under regulations of the Secretary of Agriculture, to further postpone such requirements until July 1, 1940.

Those food sections of which the effective date is postponed definitely until January 1, 1940, are:

Section 402 (c)—providing for the use of certified colors.

Section 403 (e) (1)—providing for the appearance on the label of the name and address of the manufacturer, packer, or distributor.

Section 403 (g) and (h)—providing for standards of identity and standards of quality and fill of container for food, with associated labeling requirements.

Section 403 (i)—providing for the appearance on the label of the name and ingredients of nonstandardized fabricated food.

Section 403 (j) and (k)—providing for the appearance on the label of certain information concerning special dietary food and of artificial flavors, colors, and preservatives in food.

The food sections of which the effective date is to be postponed until July 1, 1940, under regulations to be promulgated by the Secretary of Agriculture, include all those listed above except Section 402 (c) relating to certified colors. The authority of the Secretary applies only to lithographed labeling which was manufactured prior to February 1, 1939, and to containers bearing labeling which, prior to February 1, 1939, was lithographed, etched, stamped, pressed, printed, fused or blown on or in such containers. The administrative authority of the Secretary is further limited to cases where compliance with the enumerated labeling provisions would be made unduly burdensome by reason of causing the loss of valuable stocks of labeling or containers and where the postponement would not prevent the public interest being adequately served. The bill also provides that no postponement is to be made with respect to labeling which would not have complied with the requirements of the Food and Drugs Act of 1906, as amended.

When the conference report was under discussion in the House, Representatives Lea and Mapes made the following statements explanatory of the report:

Mr. MAPES. Mr. Speaker, I have asked for this time largely for the purpose of calling attention to some questions which

have been raised in regard to this conference report and to make the record complete, so that there may be no misunderstanding in regard to it.

As the gentleman from California (Mr. Lea) knows, at first some questions were raised in regard to the report because of a fear on the part of some that it discriminated against those using printed labels. The conferees felt there was no such discrimination in fact, and I think those who first raised the question have been satisfied that is true.

Mr. LEA. There is no discrimination. The exemption applies only to labels manufactured prior to February 1 of this year and not to future manufactured labels.

(Continued on page 5891)

## Injunction Sought on Wage-Hour Law

On petition of Florida citrus growers, processors, and others, Judge Alexander Akerman of the U. S. District Court for Florida on June 19 granted a temporary order restraining enforcement of the Fair Labor Standards Act in Florida as it applies to these petitioners. Hearing on the issuance of a permanent order was set for June 26, at Asheville, N. C., before Judge Akerman.

## War Contract Clause Being Studied

In view of the unsettled international situation, the Association's staff and counsel are studying the preparation of an appropriate clause to be embodied in contracts to take care of contingencies in the case of war. Completion of this study will await the enactment of neutrality legislation, which is expected to come before Congress during the next two weeks.

## N. L. R. B. TO AMEND RULES

### Announcement Made in Letters to Chairmen of Labor Committees of Congress

Changes in the rules and regulations of the National Labor Relations Board were announced by the Board on June 21 in a letter written by Board Chairman Madden to the chairmen of the House and Senate Committees on Labor. These changes, which will become effective as soon as they are put in legal form and published in the *Federal Register* as required by law, include:

(1) Permitting employers to petition the Board for investigation and hearing, under the governing provisions of Section 9 of the act for certification of representatives of employees, where two or more bona fide labor organizations are claiming a majority but neither petitions the Board for certification.

(2) Increasing the minimum period of time between the issuance of a complaint and the beginning of a hearing from five to ten days, unless the parties waive notice.

(3) Requiring that bona fide labor organizations who are parties to contracts alleged to be made in violation of the law

must be made parties to the proceedings affecting the contracts.

(4) Requiring that labor organizations alleged to be company-dominated must also be served with a copy of the complaint and notice of hearing, with the consequent opportunity to apply for intervention in the proceedings if they desire to do so.

Chairman Madden's letter stated that the last two changes have already been taken care of under the practices of the Board, but have not yet been formally embodied in the rules and regulations of the Board.

## CROP REPORTS

### Heavy Decline Indicated in Pea Production—Bean Acreage Reduced

A 1939 prospective production of 187,420 tons of green peas for manufacture, including freezing, is indicated by reports received by the Bureau of Agricultural Economics from canners giving the June 15 condition and probable yield of the crop. This compares with the 1938 record high production of 302,540 tons and an average production for the 10-year (1928-37) period of 193,660 tons.

The 1939 indicated yield of 1,477 pounds per acre compares with 1,877 pounds in 1938 and the 10-year (1928-37) average of 1,521 pounds per acre. The yields in prospect on June 15 were below average in all important States except Michigan, Wisconsin, and the Northwestern States of Oregon and Washington. Poor germination of pea seed resulted from a delayed planting season and dry weather extending eastward from Indiana to the Middle Atlantic States and southward to Virginia. Thin stands, a short vine growth and poorly filled pods occurred in much of this area due to the cumulative deficiency of soil moisture, and as the harvesting period approached, insects further jeopardized prospects with the result that June 15 indicated yields in some of these States approached near record lows.

The following table shows the indicated yield per acre on the basis of conditions on June 15, and the indicated production, by States:

| State             | Yield per Acre |           | Production |           |
|-------------------|----------------|-----------|------------|-----------|
|                   | 1938           | Indicated | 1938       | Indicated |
|                   | Pounds         | Pounds    | Tons       | Tons      |
| Maine.....        | 1,520          | 1,700     | 2,860      | 3,860     |
| New York.....     | 1,760          | 1,150     | 32,300     | 19,840    |
| Pennsylvania..... | 2,520          | 1,100     | 8,060      | 3,140     |
| Ohio.....         | 1,360          | 800       | 3,060      | 1,680     |
| Indiana.....      | 1,740          | 1,200     | 6,610      | 4,080     |
| Illinois.....     | 1,370          | 1,200     | 11,140     | 8,940     |
| Michigan.....     | 1,760          | 1,350     | 11,180     | 4,250     |
| Wisconsin.....    | 1,940          | 1,400     | 99,200     | 48,020    |
| Minnesota.....    | 1,840          | 1,300     | 18,630     | 13,000    |
| Iowa.....         | 1,980          | 1,450     | 2,710      | 1,070     |
| Delaware.....     | 820            | 800       | 1,400      | 1,000     |
| Maryland.....     | 1,880          | 1,250     | 17,770     | 8,880     |
| Virginia.....     | 2,100          | 1,400     | 4,200      | 2,500     |
| Colorado.....     | 1,860          | 1,350     | 2,950      | 2,190     |
| Utah.....         | 2,000          | 2,250     | 20,660     | 11,250    |
| Washington.....   | 1,800          | 2,450     | 26,460     | 26,700    |
| Oregon.....       | 1,600          | 2,000     | 17,280     | 16,800    |
| California.....   | 1,480          | 1,200     | 2,770      | 1,920     |
| Other States..... | 2,045          | 1,460     | 13,300     | 8,210     |
| Total.....        | 1,877          | 1,477     | 302,540    | 187,420   |

## Green and Wax Beans

The 1939 preliminary estimate of the bean acreage planted for manufacture has been broken down by the Bureau of Agricultural Economics to show the acreage for green and wax beans separately. The 1938 planted acreage of green and wax beans is also reported separately for comparison. The Bureau reports that 82.8 per cent, or 42,808 acres, consist of snap beans of green varieties and 17.2 per cent of the 1939 plantings, or 8,902 acres are wax beans. In 1938 the estimated plantings of 76,110 acres were divided as follows: 79.9 per cent, or 60,831 acres, were planted to green snap beans and 20.1 per cent, or 15,279 acres, were planted to wax beans.

Reports received by the Bureau from firms which have contracted or planted snap beans for freezing this season indicate this acreage in the United States will total not less than 2,710 acres in 1939 compared with 3,150 acres grown by the same firms in 1938. It appears that almost every firm engaged in growing snap beans for freezing is included in these reports. Deducting the acreage for freezing from the total plantings for manufacture leaves 49,000 acres for canning purposes in 1939 compared with 72,960 acres in 1938. This is a decrease of 33 per cent in the acreage planted to snap beans for canning purposes.

The following table shows the acreage, as reported to the Bureau, by States:

| State               | 1938        |           | Indicated 1939 |           |
|---------------------|-------------|-----------|----------------|-----------|
|                     | Green Acres | Wax Acres | Green Acres    | Wax Acres |
| Maine.....          | 708         | 1,002     | 621            | 469       |
| New York.....       | 5,336       | 3,864     | 4,692          | 2,108     |
| Pennsylvania.....   | 1,782       | 918       | 1,533          | 567       |
| Indiana.....        | 1,170       | 130       | 650            | .....     |
| Michigan.....       | 5,032       | 1,768     | 3,330          | 1,170     |
| Wisconsin.....      | 5,760       | 3,840     | 4,402          | 2,698     |
| Delaware.....       | 1,034       | 66        | 735            | 15        |
| Maryland.....       | 11,084      | 1,016     | 7,650          | 850       |
| South Carolina..... | 520         | .....     | 300            | .....     |
| Tennessee.....      | 3,200       | .....     | 2,300          | .....     |
| Mississippi.....    | 2,400       | .....     | 1,900          | .....     |
| Arkansas.....       | 2,664       | 936       | 2,293          | 47        |
| Louisiana.....      | 1,728       | 72        | 1,000          | .....     |
| Colorado.....       | 749         | 291       | 495            | 165       |
| Utah.....           | 1,038       | 212       | 581            | 79        |
| Washington.....     | 1,137       | 23        | 1,160          | .....     |
| Oregon.....         | 2,358       | 292       | 1,583          | 237       |
| California.....     | 1,300       | .....     | 400            | .....     |
| Other States.....   | 11,231      | 789       | 7,183          | 497       |
| Total.....          | 60,831      | 15,279    | 42,808         | 8,902     |

## Condition of Beans and Tomatoes

The Bureau of Agricultural Economics reports that conditions for snap beans on June 15 varied widely over the country. In Virginia and northward to New York, additional rains were needed. Weedy fields had resulted from excessive rains and growers inability to cultivate in many southern States. Packing was in progress by late May in Mississippi and Louisiana and was expected to be under way in the Ozarks by June 20. Growers in the late States, such as Wisconsin, Michigan and Maine did not expect to complete planting before the latter part of June.

Planting of the acreage of tomatoes for canning and products manufacture in the northern States was practically

finished by mid-June. Reports from canners in Virginia and the Ohio Valley indicate considerable loss of plants from disease and resetting was in progress.

The following table shows the condition on June 15, 1939, expressed as a percentage of the condition on the corresponding date of 1938, and calculated from the condition reports of the Bureau of Agricultural Economics for the two dates:

| State             | Beans         |               | Tomatoes          |               | State | Beans         |               | Tomatoes      |               |
|-------------------|---------------|---------------|-------------------|---------------|-------|---------------|---------------|---------------|---------------|
|                   | June 15, 1939 | June 15, 1938 | June 15, 1939     | June 15, 1938 |       | June 15, 1939 | June 15, 1938 | June 15, 1939 | June 15, 1938 |
|                   | Per cent      | Per cent      |                   |               |       | Per cent      | Per cent      |               |               |
| Maine.....        | 96            | ...           | South Carolina..  | 107           | ...   |               |               |               |               |
| New York.....     | 90            | 100           | Kentucky.....     | ...           | 78    |               |               |               |               |
| New Jersey.....   | ...           | 90            | Tennessee.....    | 91            | 96    |               |               |               |               |
| Pennsylvania..... | 81            | 93            | Mississippi.....  | 111           | ...   |               |               |               |               |
| Ohio.....         | ...           | 104           | Arkansas.....     | 86            | 72    |               |               |               |               |
| Indiana.....      | 100           | 106           | Louisiana.....    | 103           | ...   |               |               |               |               |
| Illinois.....     | ...           | 116           | Colorado.....     | 93            | 99    |               |               |               |               |
| Michigan.....     | 89            | 104           | Utah.....         | 101           | 98    |               |               |               |               |
| Wisconsin.....    | 102           | ...           | Washington.....   | 89            | ...   |               |               |               |               |
| Iowa.....         | ...           | 93            | Oregon.....       | 98            | ...   |               |               |               |               |
| Missouri.....     | ...           | 84            | California.....   | 101           | 100   |               |               |               |               |
| Delaware.....     | 103           | 99            | Other states..... | 108           | 100   |               |               |               |               |
| Maryland.....     | 92            | 101           |                   |               |       |               |               |               |               |
| Virginia.....     | ...           | 91            | U. S. average.... | 96            | 99    |               |               |               |               |

#### Cherry Crop Forecast

June 1 condition as reported to the Bureau of Agricultural Economics indicated a cherry crop of 180,350 tons in 12 important commercial States, a new record high production. It is about 40,000 tons larger than the 1938 crop and is largely the result of sharply increased production in the States producing principally red sour varieties. Production in New York and the four North Central States combined is indicated to total 94,000 tons in 1939 compared with 50,630 tons in 1938. In contrast, production in the four Mountain States is indicated to total only 8,140 tons or about 4,500 less than in 1938, and in the three Pacific Coast States, where the crop is largely sweet varieties, 78,200 tons is indicated against 77,600 tons last year.

#### Temperature and Rainfall Records

The following table gives the average temperature and total rainfall for the principal pea-growing districts for each of the past two weeks, as shown by the U. S. Weather Bureau reports for selected stations in these districts:

| District                                   | Week ended    |               | Week ended    |               |
|--|---------------|---------------|---------------|---------------|
|  | June 13, 1939 | June 20, 1939 | June 13, 1939 | June 20, 1939 |
|  | Temp.         | Rain          | Temp.         | Rain          |
| Maine.....                                 | 50            | .0            | 68            | 1.1           |
| Western New York.....                      | 69            | 1.2           | 63            | .8            |
| Tri-States.....                            | 79            | .4            | 74            | 2.1           |
| South Central Ohio.....                    | 75            | 1.4           | 73            | 2.7           |
| Central Indiana.....                       | 73            | 2.3           | 74            | 1.2           |
| Central Illinois.....                      | 69            | 1.5           | 74            | 1.9           |
| Northern Illinois, Southern Wisconsin..... | 66            | .9            | 68            | .5            |
| Southern Minnesota.....                    | 64            | 1.2           | 66            | 1.6           |
| Northern Colorado.....                     | 67            | .0            | 69            | .1            |
| Northern Utah.....                         | 64            | .1            | 62            | .8            |
| Northwestern Washington.....               | 61            | .4            | 59            | .6            |
| Southeastern Washington.....               | 64            | .4            | 62            | .1            |

#### Stocks and Shipments of Canned Peas

Total stocks of canned peas in canners' hands on June 1 were 7,424,824 cases compared with 4,653,849 cases on the corresponding date in 1938, according to figures compiled by the Association's Division of Statistics. Shipments during

May amounted to 1,895,014 cases as compared with 1,190,356 cases during May, 1938.

Shipments during the year closed with May 30 amounted to 22,624,340 cases compared with 20,967,380 cases during the preceding year.

Of the stocks on hand on June 1, 1939, 1,012,325 cases were sold and not shipped, and 6,412,499 cases were unsold. On June 1, 1938, unsold stocks of canned peas amounted to 3,300,545 cases.

The foregoing figures are based on reports from 89 per cent of the canners packing peas in 1938, together with estimates for the 11 per cent not reported.

The following table gives details as to stocks on June 1, 1939, and shipments during May:

|                     | Stocks on June 1, 1939 |              |             | Shipments during May |
|---------------------|------------------------|--------------|-------------|----------------------|
|                     | Sold not shipped Cases | Unsold Cases | Total Cases |                      |
| New York and Maine: |                        |              |             |                      |
| Alaska.....         | 2,056                  | 29,387       | 31,443      | 3,517                |
| Sweets.....         | 104,812                | 365,848      | 470,660     | 145,062              |
| Middle Atlantic:    |                        |              |             |                      |
| Alaska.....         | 13,871                 | 206,851      | 220,722     | 55,446               |
| Sweets.....         | 19,965                 | 93,883       | 113,848     | 65,272               |
| Mid-West:           |                        |              |             |                      |
| Alaska.....         | 250,698                | 1,838,450    | 2,089,148   | 630,481              |
| Sweets.....         | 260,986                | 2,348,878    | 2,609,864   | 599,629              |
| Western:            |                        |              |             |                      |
| Alaska.....         | 6,279                  | 21,504       | 27,783      | 9,236                |
| Sweets.....         | 363,658                | 1,607,698    | 1,971,356   | 386,371              |
| Total U. S.:        |                        |              |             |                      |
| Alaska.....         | 272,904                | 2,096,192    | 2,369,096   | 698,680              |
| Sweets.....         | 739,421                | 4,316,307    | 5,055,728   | 1,196,334            |

#### LEA BILL GOES TO PRESIDENT

(Continued from page 5889)

Mr. MAPES. And with the adoption of this conference report all labeling provisions of the law are postponed from going into effect from June 25 to the 1st of January, 1940?

Mr. LEA. That is correct; yes.

Mr. MAPES. Now, there is one other question which the conferees have discussed. Of course, there are some people, a limited number to be sure, who would be glad if this law never went into effect. My understanding is that it is the position of the chairman of the committee, and the other members of the conference committee, as far as the House members are concerned, and we hope the same may be said of the Senate conferees, although we are not authorized to speak for them, that there shall be no further extension of the law or any material amendments made to it, in the immediate future at least, and that the industries affected by the law should govern themselves accordingly and be prepared to comply with it as now written.

Mr. LEA. The gentleman has correctly stated the view of the conferees. It was our feeling that it is the desire of the House that there be no further extensions before the act goes into effect, or substantive amendments.

\* \* \*

Mr. JENKINS of Ohio. To what was the gentleman from Michigan referring when he said that certain portions would be postponed until next year?

Mr. LEA. There is discretionary power in the Secretary of Agriculture to extend the use of certain old labels, where they comply with existing law, and the compliance with the new law would be unduly burdensome.



### Fruit Pack Bulletin Mailed to Members

Copies of the bulletin furnishing statistics on the 1938 fruit pack as compiled by the Association's Division of Statistics have been mailed to the membership. Should any member of the Association fail to receive the bulletin, a copy will be mailed upon request.

### Fruit and Vegetable Market Competition

Carlot Shipments as Reported by the Bureau of Agricultural Economics, Department of Agriculture

|   | Week ending—    |                 |                 | Season total to— |                 |
|---|-----------------|-----------------|-----------------|------------------|-----------------|
|   | June 17<br>1938 | June 17<br>1939 | June 10<br>1939 | June 17<br>1938  | June 17<br>1939 |
| <b>VEGETABLES</b>                         |                 |                 |                 |                  |                 |
| Beans, snap and lima.....                 | 133             | 95              | 135             | 7,858            | 6,431           |
| Tomatoes.....                             | 1,765           | 1,780           | 1,720           | 21,491           | 16,644          |
| Green peas.....                           | 140             | 162             | 213             | 3,358            | 4,024           |
| Spinach.....                              | 0               | 0               | 2               | 6,457            | 6,123           |
| Others, domestic, competing directly..... | 1,426           | 2,560           | 1,818           | 137,688          | 130,984         |
| <b>FRUITS</b>                             |                 |                 |                 |                  |                 |
| Citrus, domestic.....                     | 3,148           | 3,703           | 3,915           | 132,338          | 144,414         |
| Imports.....                              | 20              | 0               | 0               | 164              | 77              |
| Others, domestic.....                     | 1,500           | 1,300           | 1,026           | 10,774           | 10,262          |

### Veterans Bureau Seeks Bids on Canned Fruit

The Procurement Division of the Veterans Administration is asking for bids on the following fruits in No. 10 cans packed six to the case. Deliveries are to be made f.o.b. Perryville, Md., San Francisco, and Chicago.

| Commodity                  | Quantity<br>Doz. cans | Opening<br>date |
|----------------------------|-----------------------|-----------------|
| Pears, Bartlett.....       | 7,515                 | July 7          |
| Grapes, seedless.....      | 2,440                 | July 6          |
| Grapes, muscat.....        | 550                   | July 6          |
| Peaches, yellow cling..... | 8,580                 | July 18         |
| Plums.....                 | 3,600                 | July 10         |
| Blackberries.....          | 1,575                 | July 19         |

Copies of the invitations, including specifications and general conditions, can be obtained by communicating with the Procurement Division, Veterans Administration, Washington, D. C.

### BANS QUANTITY DISCOUNT PLAN

#### Trade Commission Issues Order Against System Used by Standard Brands, Inc.

On June 15th, the Federal Trade Commission issued an order directing Standard Brands, Incorporated, to cease and desist from violating the Robinson-Patman Act by granting price discriminations to various purchasers of baker's yeast. The proceeding against Standard Brands, which was originally instituted on November 21, 1936, was one of the earlier complaints issued by the Commission under the Robinson-Patman Act.

The Commission found that in its sales of yeast to chain bakers, Standard Brands granted quantity discounts based upon the total monthly purchases of the entire chain, even though in practice the yeast was delivered by Standard Brands not to a central warehouse, but in smaller lots to the individual units of the chain. This, the Commission found, constituted a discrimination in price, since the individual units of a chain were able to procure yeast at prices lower than

the prices paid by independent bakers located in the same city whose purchases may have been as large as those of the chain units.

The Commission found that this discrimination in price could not be justified on the basis of savings in the cost of manufacture, sale, or delivery, and ordered Standard Brands to discontinue granting price differentials to a single purchaser based on the total quantity purchased, irrespective of the quantities delivered to separate plants, bakeries, or warehouses of such purchases, where such differentials could not be justified on the basis of savings in cost of manufacture, sale, or delivery.

The Commission also found that Standard Brands' practice of granting quantity discounts ranging from 8 to 44 per cent, based upon the purchaser's monthly requirements of yeast, was a violation of the Robinson-Patman Act. The Commission pointed out that the discounts were predicated not upon actual purchases from Standard Brands, but upon the customer's total monthly requirements, part of which might be purchased from other manufacturers, and found that the discounts could not be justified on the basis of savings in cost.

### CONGRESS SUMMARY

#### Speedy Action Taken on Tax Bill—New Federal Financing Program Proposed

The House, followed by the Senate, passed in short order during the past week the Revenue Act of 1939. The new tax law substitutes a flat 18 per cent tax on corporations with incomes above \$25,000 in lieu of the tax now imposed, retains the present graduated rates of tax on corporations with incomes of \$25,000 or less, permits taxpayers to carry over their net operating business losses for a period of two years, and extends the temporary excise taxes and the three-cent first-class postage rate for a period of two more years. The House on Friday accepted minor amendments made by the Senate.

Other Congressional developments included approval of a partial report of House and Senate conferees on the Agricultural Department Appropriation bill, prolonged Senate debate on extension of the President's monetary authority, and the receipt of a new Presidential program of Federal financing of self-liquidating projects totaling \$3,060,000,000 over a seven-year period.

The District of Columbia tax bill as reported by the Senate District Committee would continue the business privilege tax in modified form.

Although it had been stated that the House Rules Committee would grant a rule for free and open House consideration of wage and hour amendments, no request was made for such a rule. Representative Smith of Virginia, a member of the Committee, introduced on Thursday resolutions to create select committees to investigate both the National Labor Relations Board and the Wage and Hour Division of the Department of Labor which administers the Fair Labor Standards Act. The resolutions have been referred to the Rules Committee.

The Senate Committee on Agriculture reported favorably on June 19 the proposed Federal Seed Act (H. R. 5625),

which is designed to regulate interstate and foreign commerce in seeds, to require labeling to prevent misrepresentation of seeds, and to require certain standards with respect to imported seeds.

The Senate Agricultural Committee also has recommended the passage of a bill (S. 2212) which would authorize the appropriation of \$5,000,000 each year for the development of marketing services for farm commodities. The funds when appropriated would be apportioned among the States "for the purpose of organizing, fostering, promoting, and developing marketing and marketing services for farm commodities . . . with a particular view to providing a marketing system which will furnish a steady flow of standardized farm commodities to centers of distribution and will provide for farmers adequate and readily available marketing services for commodities produced by them."

### LOGAN ADMINISTRATIVE-LAW BILL

#### Would Establish Uniform Procedure for Regulations, Appeals, and Court Review

The fact that members of the canning industry are subject directly or indirectly to regulations issued by many of the Federal departments and agencies has brought about a number of inquiries from canners concerning the provisions of the Logan administrative-law bill (S. 915) which has been favorably reported to the Senate by the Judiciary Committee. The statutes under which government regulations are promulgated are not uniform in their provisions establishing the procedure to be followed in the issuance of regulations, nor do the statutes contain uniform provisions for appeals of administrative decisions and for court review of administrative regulations.

The Logan bill proposes a uniform procedure in the Federal departments and agencies for the issuance of rules, regulations, and orders; a uniform system of administrative appeals; and a uniform method of court review of administrative rules, regulations, orders, and decisions. Enactment of the bill has been urged by the American Bar Association.

In its report the Senate Judiciary Committee stated that "the basic purpose of this administrative-law bill is to stem and, if possible, to reverse the drift into parliamentarism which, if it should succeed in any substantial degree in this country, could but result in totalitarianism with complete destruction of the division of governmental power between the Federal and State Governments and with the entire subordination of both the legislative and judicial branches of the Federal Government to the executive branch wherein are included the administrative agencies and tribunals of that Government."

The uniform procedure to be established for the issuance of rules, regulations, and orders, if the bill is enacted, provides that all administrative rules, regulations, and orders and all amendments, supplements, or modifications thereto are to be issued only after publication of notice and public hearing. Within ten days after their approval such rules are to be published in the *Federal Register* and are not to be effective until publication, except when the President declares that a public emergency exists.

Administrative rules required by statutes passed subsequent to the enactment of the bill are to be issued within one year from the date of enactment of the statute authorizing their issuance. Necessary supplements, amendments, or modifications could be issued in accordance with the provisions set out in the Logan bill.

The bill also provides that any person substantially interested in the effects of an administrative rule in force at the time of enactment of the administrative-law bill may within ten days of such enactment petition for a reconsideration of the rule and request a publication of notice and public hearing. In that event the administrative agency is to determine whether the rule should continue in force or be modified or rescinded. A provision such as this would permit any interested person to petition for a reconsideration of any of the general administrative regulations issued by the Secretary of Agriculture under the new Food and Drugs Act.

Under another provision of the bill no person could be penalized for an act done in good faith in conformity with a rule which has been rescinded or declared invalid, unless the act was done more than thirty days after publication in the *Federal Register* of the rescission or final judicial determination of the invalidity of the rule.

In addition to the present jurisdiction of the United States Court of Appeals for the District of Columbia, that court would be granted jurisdiction upon petition filed within thirty days from the date of publication of an administrative rule, to hear and determine by declaratory judgment whether the rule is in conflict with the Constitution or the statute under which issued. Had such jurisdiction reposed in the Court of Appeals for the District of Columbia at the time regulations were issued under the wage and hour law, it would have been possible to test quickly and promptly the validity of the regulations and the constitutionality of the law.

When any person is aggrieved by a decision of an officer or employee of an administrative agency, the bill provides that he may within twenty days notify the head of the agency of his objections, specifically requesting that the controversy be referred to an intra-agency board for hearing and determination. A full hearing would then be held at which any person having a substantial interest might intervene. Within thirty days after the evidence and arguments were closed, the board would make its findings of fact and decision. The findings of fact and decision, however, would be subject to the approval, disapproval, or modification by the head of the agency concerned.

When the matter in controversy is such that delay would create an emergency contrary to the public interest and there is administrative action or inaction prior to or without a hearing which results in damage to the aggrieved person, the findings of fact and decision of the board would be required to state the amount of pecuniary damage that has been suffered by the aggrieved party. Upon approval by the head of the agency, the amount of damages, if acceptable to the aggrieved person, would be certified to Congress for an appropriation with which to pay the same.

Finally the bill provides for a court review for any person to a proceeding before an intra-agency board aggrieved by

the resulting decision. Within thirty days he may petition the United States Court of Appeals for the District of Columbia, or the circuit court of appeals where he resides or maintains his principal place of business, for review of the decision. The court is directed to set aside the administrative decision if it is made to appear to the satisfaction of the court (1) that the findings of fact are clearly erroneous, or (2) that the findings of fact are not supported by substantial evidence, or (3) that the decision is not supported by the findings of fact, or (4) that the decision was issued without due notice and a reasonable opportunity having been afforded the aggrieved party for a full and fair hearing, or (5) that the decision is beyond the jurisdiction of the agency, or (6) that the decision infringes the Constitution or statutes of the United States, or (7) that the decision is otherwise contrary to law.

The judgment of the court would be final, except for a review by the United States Supreme Court. The courts would also be given jurisdiction to impose damages in cases where the court finds that there was no substantial basis for the petition for review. In all cases the costs of review are to be allowed the prevailing party.

### Glass Container Simplified Practice Reaffirmed

The National Bureau of Standards of the Department of Commerce has announced the reaffirmation without change by the Standing Committees of Simplified Practice Recommendation R91-32, which covers a simplified list of sizes for glass containers for preserves, jellies and apple butter. This recommendation became effective, in its original form, in 1929, was revised in 1931 and originally reaffirmed in 1935.

### 1939 Peach Pack a Record in Australia

While rains came too late to help the Australian pear pack they assured a record pack of canned peaches at 1,853,000 cases, compared with 1,791,000 cases in 1938.

The 1939 pear pack totaled 573,000 cases, compared with 860,000 cases in the previous year. The apricot pack was 282,000 cases, compared with 380,000 the year before.

### Food Import Inspection at Ports in Egypt

A Foodstuffs Control Office has been established at the Alexandria harbor and another one at Port Said with the object of inspecting all foodstuffs entering Egypt, including canned foods, which are imported in very large quantities.

Since its institution about nine months ago, the American commercial attache at Cairo reports, the Control Office is said to have accomplished some satisfactory results. Although the exact quantities of foodstuffs condemned by the sanitary authorities are not known, it is reported that they have been considerable. Canned foodstuffs have been particularly hit, most of which, however, have been of Japanese origin. There was also one case in which American canned fish was involved.

A shipment due to arrive at Alexandria coming through the Suez Canal was seized at Suez and ordered to be reshipped as being unfit for human consumption. The shipment, which consisted of 300,000 tins of sardines, is reported to be of Japanese origin.

American exporters of canned foodstuffs into Egypt should note the close surveillance now prevailing in Egypt on all imported foodstuffs.

### Belgian Import Duty on Canned Fruits Raised

By a decree effective June 1, 1939, canned fruit, whole or cut, preserved in juice, or with sugar or vinegar, in containers weighing over 3 kilos, has been made dutiable in Belgium, with an unimportant exception, under tariff item 225-a-2 at 138 francs per 100 kilos net, instead of under item 225-a-1 at 34.50 francs per 100 kilos net, according to the American commercial attache at Brussels.

### Exhibit at Home Economics Meeting

At the annual meeting of the American Home Economics Association in San Antonio, Texas, the week of June 19th, Miss Marjorie H. Black was in charge of a booth in which were exhibited the publications of the National Canners Association Home Economics Division. About 2,000 home economics teachers, home economics women in business, dietitians, extension people, homemakers, and others attended the meeting.

Much interest was shown in the three recipe books from the Service Kitchen, which were the central feature of the exhibit. Their attractiveness and the usefulness of the recipes, set as they are in menus, were commented upon favorably.

Miss Black made a five-minute record for the radio with Mary Mason of the National Broadcasting Company of Washington, who also attended the meeting. This record was sent back to Washington and was used on Mrs. Mason's Home Forum program.

This meeting was the 30th anniversary of the founding of the American Home Economics Association. There were many consumer groups attending the meeting and consumer education was stressed from numerous angles.

### CONTENTS

|  | PAGE |
|--|------|
| Lea bill goes to President .....                     | 5889 |
| Injunction sought on Wage-Hour law .....             | 5889 |
| War contract clause being studied .....              | 5889 |
| N. L. R. B. to amend rules .....                     | 5889 |
| Crop reports .....                                   | 5890 |
| Temperature and rainfall records .....               | 5891 |
| Stocks and shipments of canned peas .....            | 5891 |
| Fruit pack bulletin mailed to members .....          | 5892 |
| Fruit and vegetable market competition .....         | 5892 |
| Veterans Bureau seeks bids on canned fruit .....     | 5892 |
| Bans quantity discount plan .....                    | 5892 |
| Congress summary .....                               | 5892 |
| Logan administrative-law bill .....                  | 5893 |
| Glass container simplified practice reaffirmed ..... | 5894 |
| 1939 peach pack a record in Australia .....          | 5894 |
| Food import inspection at ports in Egypt .....       | 5894 |
| Belgian import duty on canned fruits raised .....    | 5894 |
| Exhibit at Home Economics meeting .....              | 5894 |